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MCI

May 20, 2004

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

By Hand Delivery

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Notification of Consummation and Request for Waiver –  
Assignment of Multipoint Distribution Service License  
*WorldCom, Inc and its Subsidiaries (debtors-in-possession), Transferor,  
and MCI, Inc , Transferee, Applications for Consent to Transfer and/or  
Assign Section 214 Authorizations, Section 310 Licenses, and Submarine  
Cable Landing Licenses, WC Docket No. 02-215*

Dear Ms. Dortch:

In a Memorandum Opinion and Order released on December 19, 2003 (the “Order”), the Commission granted the Application of WorldCom, Inc. and its subsidiaries, debtors-in-possession (“Debtors”) to transfer control of certain licenses and authorizations from Debtors to the newly formed MCI, Inc. (“MCI”), including applications to assign authorizations for certain Part 21 multipoint distribution service (“MDS”) licenses.<sup>1</sup> The purpose of this letter is to notify the Commission that the transfer of Debtors to MCI was consummated on April 20, 2004. This notification of consummation is being filed pursuant to section 21.11(d) of the FCC’s rules,<sup>2</sup> and is applicable to the following MDS license (the “License”).

<sup>1</sup> *WorldCom, Inc and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee, Applications for Consent to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses, Memorandum Opinion and Order, 18 FCC Rcd 26484 (Dec. 19, 2003).*

<sup>2</sup> 47 C.F.R. § 22.11(d).

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<b>Authorization Holder</b>	<b>Transfer of Control File No.</b>	<b>Call Sign</b>	<b>New Name of Authorized Entity</b>
Intermedia Services LLC (DIP)	20030617AAA	KFK28	Intermedia Services LLC

Pursuant to section 21.19 of the FCC's rules,<sup>3</sup> MCI also hereby requests waiver of two FCC requirements set forth in section 21.11(d),<sup>4</sup> due to the unique circumstances described below. As noted, on December 19, 2003, the Commission granted the Application of Debtors to transfer control of certain licenses and authorizations from Debtors to the newly formed MCI, and on April 20, 2004, the transfer of Debtors to MCI was consummated upon MCI's emergence from bankruptcy. Among the wireless assignments approved by the *Order* was a single MDS license held by Intermedia Services LLC (DIP). Because this License was part of a larger transaction involving hundreds of licenses, MCI incorrectly assumed that the time frame for providing notification of consummation for the MDS License was the same as for other wireless licenses. MCI today discovered that, pursuant to section 21.11(d) of the FCC's rules, it was required to (1) complete the assignment of the MDS License within 45 days of the Commission's *Order* authorizing the transfer, and (2) provide notification of consummation within ten days of its occurrence.<sup>5</sup>

The FCC has previously acknowledged that having inconsistent procedures and filing requirements for similar services may cause problems.<sup>6</sup> Indeed, the FCC has proposed in a pending NPRM to revise the MDS rules to conform to and merge with the requirements for other wireless licenses.<sup>7</sup> In particular, the Commission has proposed to extend the 45-day consummation notice period applicable to MDS licenses to 180 days, consistent with requirements for other wireless services.<sup>8</sup> Such a change would presumably also involve extending the time frame for providing notification of consummation from 10 to 30 days.

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<sup>3</sup> 47 C.F.R. § 21.19

<sup>4</sup> 47 C.F.R. § 21.11(d).

<sup>5</sup> Moreover, it was originally intended that the MDS License be assigned to Nextel as part of the Nextel-WorldCom DIP transaction. *See Order* n.113. The License, however, was inadvertently omitted from that application. MCI anticipates that it will shortly file an application or other submission to correct that error.

<sup>6</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 18 FCC Rcd 6722, ¶ 168 (2003) ("NPRM") (recognizing that a consistent set of procedures and filing requirements for MDS and other wireless services "would increase the speed and accuracy of the assignment and transfer process").

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* ¶ 169

Section 21.19 permits waiver of an FCC rule when either of two standards is met: (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and grant of the waiver is otherwise in the public interest; or (2) the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there was no reasonable alternative. Waiver is here justified under either standard.<sup>9</sup>

With respect to the first waiver standard, the underlying purpose of the FCC's 45-day and 10-day consummation rules is to ensure that assignments or transfers of MDS licenses are consummated in a timely manner, and that the Commission receives timely notice of any such consummation. This purpose will not be frustrated by grant of the requested waiver. As described above, the FCC has issued an NPRM that implicitly acknowledges that the underlying purpose of the MDS consummation deadlines would not be frustrated if those deadlines were conformed to the deadlines that apply to other wireless consummations. In addition, grant of this waiver would serve the public interest. No party will be harmed by grant of this waiver, and neither MCI nor any other party will unfairly profit or otherwise receive an unfair advantage by virtue of this waiver. The requested waiver therefore satisfies the first standard set forth in section 21.19.

The requested waiver also satisfies the second standard of section 21.19, because the unique facts and circumstances pertaining to the License render application of the 45-day and 10-day consummation rules inequitable and otherwise contrary to the public interest. As noted, the License is but one of hundreds of licenses and authorizations that were transferred or assigned from Debtors to MCI. For every such license and authorization other than the License, MCI has complied with the relevant consummation deadlines. In light of MCI's compliance with the consummation requirements for the vast majority of licenses implicated by the transfer from Debtors to MCI, it would be unduly harsh to effectively punish MCI for inadvertently failing to comply with deadlines that apply to only one license – deadlines that the FCC itself has recognized should be lengthened to provide consistent treatment of similar services. In addition, MCI had no reasonable alternative to seeking the relief requested herein. As explained above, MCI's non-compliance with the 10-day deadline was due to an inadvertent error. Moreover, given that MCI could not complete the assignment of the License until it emerged from bankruptcy, it was effectively impossible for MCI to comply with the 45-day rule. Waiver is therefore justified under the second standard of section 21.19.

For the foregoing reasons, the Commission should grant MCI waiver of the 10-day and 45-day consummation deadlines set forth in section 21.11(d) of the FCC's rules.

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<sup>9</sup> 47 C.F.R. § 21.19.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Dennis Guard/ARC". The signature is written in a cursive, flowing style.

Dennis Guard

cc:

Qualex  
Erin McGrath  
Christine Newcomb

Jeffrey Carlisle  
Jeffrey Tobias  
Ann Bushmiller

David Krech  
JoAnn Lucanik  
Wayne McKee